

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: NATIONAL COLLEGIATE) Docket No. 13 C 9116
ATHLETIC ASSOCIATION STUDENT-)
ATHLETE CONCUSSION INJURY) Chicago, Illinois
LITIGATION,) March 7, 2017
) 1:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiffs: HAGENS BERMAN SOBOL SHAPIRO, by
MS. ELIZABETH A. FEGAN
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For Plaintiff Whittier: COATS ROSE YALE RYMAN & LEE, by
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For Plaintiff Nichols: EDELSON PC, by
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For Defendant NCAA: LATHAM & WATKINS, by
MS. JOHANNA MARGARET SPELLMAN
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1 (Proceedings had in open court:)

2 THE CLERK: 13 C 9116, NCAA Student Athlete Concussion
3 Injury Litigation.

4 MS. FEGAN: Good afternoon, your Honor. Elizabeth
5 Fegan for plaintiffs.

6 MS. SPELLMAN: Johanna Spellman for defendants.

7 THE COURT: Good afternoon. Who do we have on the
8 phone?

9 MR. JEFFERSON: Dwight Jefferson, Judge.

10 THE COURT: Good morning, Mr. Jefferson.

11 MR. JEFFERSON: I just wanted to -- good morning.

12 THE COURT: Who else do we have on the phone? Anyone
13 else? No? Okay.

14 MR. JEFFERSON: Just me, Judge.

15 THE COURT: All right. So we are here for status in
16 this case. There are a couple of things that the parties have
17 filed at my request. One is the response to my order
18 requesting a supplemental status report regarding the
19 additional notice program expenses.

20 In short, the parties indicate that based upon various
21 developments, most significant of which is the additional
22 robust addresses and e-mail information that they received from
23 the various member institutions, that that along with other
24 things have resulted in an estimated increase in the cost of
25 notice program from the \$1.5 million that was set forth as part

1 of the motion for preliminary approval of the amended
2 settlement, to now an estimate of \$2,135,380.21. I don't know
3 how that's an estimate, but that's certainly the updated
4 estimate, total estimate cost, of the notice program.

5 The parties submit that the increased cost is
6 necessary and reasonable, and that the total cost of the notice
7 program remains well within the reasonable range for notice
8 program costs when compared to comparable settlements.

9 What I wanted to do today, and the reason why I wanted
10 to have the parties appear for this status, is that I did want
11 to enter an order providing anyone that cares to an opportunity
12 to file any objections to the parties' request that the new
13 estimate be deemed reasonable. And so I am going to give -- to
14 the extent anyone has any objections to the response, I am
15 going to give the parties, or anyone that wishes to, 14 days
16 from today to file any objections to the request by the
17 settling parties that the \$2.135 million for the updated total
18 estimated cost of notice program is deemed reasonable.

19 I don't know whether we will receive anything. If we
20 do, I will address it. And if we don't, I will go ahead and
21 enter an order. And we will see what comes. We will see what
22 comes up.

23 Also pending before the Court is a joint motion for
24 extension of time. And this addresses the various deadlines
25 that I had imposed as part of my order granting preliminary

1 approval of the class action settlement. The parties request
2 additional time so that they can provide additional direct mail
3 notice to a number of additional class members. My
4 understanding is that approximately 78 NCAA member institutions
5 have yet to provide settlement class member contact
6 information.

7 I believe that comprises somewhere between around
8 eight to ten percent of the overall member institutions, if I
9 recall?

10 MS. SPELLMAN: That seems about right, your Honor.

11 THE COURT: But as I noted the last time that we were
12 together, I do think that maximizing the direct notice program
13 so that as many putative class members as possible can receive
14 direct notice of the settlement is something that we should
15 endeavor to accommodate. And so, therefore, I'm going to grant
16 the request to reset dates.

17 But again, because of the size of this class, of the
18 settlement class, I'm going to give anyone who wishes to 14
19 days to file any objections. Okay? But here are the revised
20 dates. So I have reviewed the dates proposed by the parties.
21 And at this point, the notice administrator plans to send out
22 the second round of direct notice, based upon the new
23 information that the parties received from the member
24 institutions, on or before April 14.

25 Given that, I believe that setting May 5 as the deadly

1 by which the settlement class members can object or opt out is
2 too short of a timeframe, particularly if the last round of
3 notice goes out April 14. People may not receive them until
4 five, six, seven days later. And that leaves basically little
5 bit over two weeks for them to evaluate their rights.

6 So as a result, I'm going to extend that date. So the
7 deadline for settlement class members to object or opt out of
8 the settlement will now be May 31.

9 Then the deadline for the notice administrator to file
10 with the Court the opt-out list with an affidavit attesting to
11 the completeness and accuracy thereof will be June 16. The
12 notice administrator program administrator will file
13 declarations to the Court concerning the implementation of the
14 notice programs and other terms of the settlement by June 16.

15 The motion for final approval of the settlement,
16 including responses to any objections that were raised, shall
17 be filed by June 23. And the fairness hearing will be
18 rescheduled to July 28.

19 Do you recall what time we set the fairness hearing
20 for on June 29?

21 MS. FEGAN: Your Honor, I typically wouldn't ask to
22 reschedule a fairness hearing. July 28 and 29 is our firm
23 retreat. And I know Mr. Berman would very much like to be at
24 both. If it's at all possible to pick either the 21st or
25 August 4, if your Honor would prefer to have it on a Friday, we

1 would very much appreciate it.

2 MR. JEFFERSON: Judge, that was scheduled at 10:00
3 a.m.

4 THE COURT: Okay. Thank you.

5 MS. FEGAN: Or even earlier that week, your Honor.

6 THE COURT: When is the retreat?

7 MS. FEGAN: It's the 28th and 29th, that Friday and
8 Saturday. If it's not possible, we will make it work.

9 THE COURT: How about the 27th?

10 MS. FEGAN: That will be great. Thank you.

11 THE COURT: All right. We will set the final fairness
12 hearing for July 27, at 10:00 a.m.

13 MS. FEGAN: Thank you.

14 THE COURT: If you could send me a proposed order with
15 the revised dates, that would be great. And what I will do is,
16 I will revise that to state these are the dates that I propose
17 that we -- that I want to change it to. And again, if there
18 are any objections, I will give anyone that wishes to some time
19 to file any objections to those dates. I can't imagine there
20 will be any.

21 Furthermore, with regard to that, as I noted, I do
22 think it's important to take steps to let the class members
23 know about the revised dates. So as a result, the parties have
24 suggested various steps that they will take to inform the class
25 of the revised dates, including e-mails as well as press

1 releases, changing the settlement class website to notify the
2 class of the revised dates. The revised dates will obviously
3 also be posted on the court's website as well.

4 And so the steps that the parties have proposed in the
5 joint motion for extension of time appear reasonable to me.
6 And so you can go ahead and do that once the 14 days has
7 lapsed.

8 MS. FEGAN: Okay.

9 THE COURT: All right. Is there anything else we need
10 to address today?

11 MR. THOMASSEN: Your Honor, if I may. I'm sorry, I
12 didn't step up before. Ben Thomassen here for Mr. Nichols.

13 I just wanted to clarify, notice was sent out in the
14 motion that was filed with the Court. And your Honor also
15 addressed it through your prior order. But objections to the
16 fee briefs and petitions that have been filed, those would also
17 fall within the new objection deadline as well?

18 THE COURT: That's correct.

19 MR. THOMASSEN: Thanks, Judge.

20 THE COURT: So the other question I want to --

21 MR. JEFFERSON: The Court --

22 THE COURT: Hold on, Mr. Jefferson.

23 So the other question that I wanted to talk to the
24 parties about is, so we have these member institutions, right,
25 78 member institutions, who haven't provided the class member

1 contact information yet. They have received subpoenas.

2 Have you been in contact with them?

3 MS. SPELLMAN: With some of them, your Honor.

4 THE COURT: And what about the ones that just simply
5 refused or have failed to provide any information?

6 MS. SPELLMAN: I have not -- to my knowledge, there
7 have not been any that have just outright refused. I think
8 it's a matter of hopefully following up with them, perhaps
9 giving them some clarity on the scope of what the request is
10 since, you know, as worded it comes across as very broad,
11 potentially burdensome request. So that we are in discussions
12 with NCAA counsel about how best to do that.

13 But our intention is to reach out directly to them, to
14 try to really push them to provide what they are able to
15 provide by March 24.

16 THE COURT: Okay. And to the extent that institutions
17 don't provide any information or refuse to provide information,
18 we talked about that little bit before. But how would that
19 impact the settlement vis-a-vis those institutions?

20 MS. FEGAN: Your Honor, I don't think that it does.
21 Actually this is something I did go back and check the
22 settlement agreement. It doesn't mean that they are not
23 released. I think it just affects the notice program itself.
24 And given the very small numbers here, in talking to the notice
25 administrator, we don't think that it affects the overall

1 percentage reached that we thought we'd achieve, which we've
2 already achieved even without them.

3 And so I think that what we are trying to do at this
4 point is almost achieved to perfect. But I don't think it will
5 affect either the notice program or ultimately the settlement
6 itself if there are some number left at the end of the day.

7 THE COURT: If there are not, if there are schools
8 that for one reason or another do not provide any information
9 responsive to the subpoenas, at this point I am considering
10 issuing notices for rule to show cause as to why they have not
11 and requiring them to appear before me to explain to me why
12 they are refusing to cooperate with a duly issued subpoena. So
13 you might inform them of that as well.

14 I may also take the step of requesting that the
15 parties file, so that everyone can see, a list of those member
16 institutions that have not provided any information.

17 MR. JEFFERSON: Thank you, Judge.

18 THE COURT: So that if the subpoena is not incentive
19 enough, perhaps public shaming on the docket would be. Okay?

20 Mr. Jefferson, did you want to bring anything up?

21 MR. JEFFERSON: Judge, only two things. I was going
22 to ask, as you just indicated, if we can have identification of
23 the 78 institutions that have not complied with the subpoenas.
24 I think you -- you addressed that, Judge.

25 And the only other thing I had was regarding the

1 motion for extension of paragraph 12 and 13. You're not making
2 any changes to the dates that are proposed in that order?
3 You're going to sign an order with those dates?

4 THE COURT: No. Those dates I will change. 12 and 13
5 is what counsel was addressing, which is the deadline to
6 respond or object to the fee petitions, which is currently
7 March 10. I will go ahead and change those dates to May 31, to
8 coincide with the dates for objections. Okay?

9 With regard to the member institutions that have not
10 provided any response, having given that some more thought,
11 given the fact that the notice administrator is going to be
12 issuing second round of direct notice by April 14, I am going
13 to order that the parties submit a status report listing those
14 member institutions that have not provided any information
15 responsive to the subpoena on April 15.

16 Okay. Anything else that we need to address today?

17 MS. SPELLMAN: No, your Honor.

18 MS. FEGAN: No, your Honor.

19 THE COURT: Thank you very much issues.

20 MS. FEGAN: Thank you.

21 MR. JEFFERSON: Thank you.

22 (Which were all the proceedings heard in this case.)
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CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct
and complete transcript of the proceedings had at the hearing
of the aforementioned cause on the day and date hereof.

/s/Alexandra Roth

3/10/2017

Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division

Date